

REMARKS

Claims 41, 42, 44-50, 54-56, 58-68, and 70-91 are pending. Claims 44, 45-48, 50, 56, 58, 62-66, 70-73, 75, and 81 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting. Claims 42, 61-63, 84, 89, and 90 were rejected under 35 U.S.C. § 112, first paragraph, for failure to comply with the written description requirement. Each of these rejections is addressed below.

Rejections under the Judicially Created Doctrine of Obviousness-Type Double Patenting

Claims 44, 45-48, 50, 56, 58, 62-66, 70-73, 75, and 81 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9, 12, 13, 44, 47, 48, and 54-59 of co-pending U.S. Patent Application Serial No. 11/019,559.

MPEP § 804(I)(B)(1) states:

If “provisional” [obviousness-type double patenting] ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue.

Applicants filed a Terminal Disclaimer in the later filed application, U.S.S.N. 11/019,559, on February 4, 2008 and respectfully request that the rejection for obviousness-type double patenting in the present case be withdrawn.

Rejections under 35 U.S.C. § 112, first paragraph

Claims 42, 61-63, 84, 89, and 90 stand rejected under 35 U.S.C. § 112, first paragraph, for new matter. The Examiner states that the specification as filed does not support the phrase “less than 16 weeks.”

While not agreeing with the Examiner, in order to expedite prosecution, Applicants have amended claims 42, 61, and 86, from which all of the rejected claims depend, to recite the limitation that the subject is 13-16 weeks pregnant. In view of the amendment, this rejection can be withdrawn.

CONCLUSION

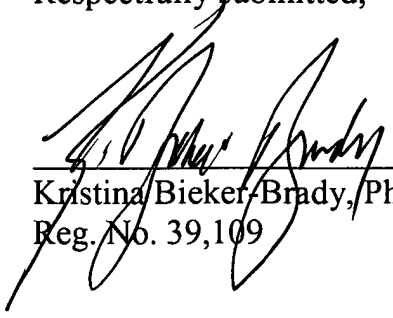
Applicants submit that the claims are now in condition for allowance and such action is respectfully requested.

If there are any additional charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date:

February 14, 2008



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